

Antideficiency Act Violations

by Mr David G. Sapp

The Air Force is placing increased emphasis on identifying, investigating, reporting and ultimately reducing Antideficiency Act (ADA) violations. How are we doing?

An ADA violation occurred in September 1993 because the Air Force committed \$400,000 in Base Realignment and Closure (BRAC) funds that were not yet legally available to contract for a Environmental Baseline Survey (EBS) and Environmental Impact Statement (EIS) for closing an Air Force Reserve Station (AFRS). The investigating officer found that \$37,779 of BRAC funds were expended at AFRS before contract action was stopped in December 1993. The ADA violation resulted from reliance on faulty interpretations of, and consequent failure to comply with, conditions specified by the 1993 Base Closure and Realignment Commission. A violation of 31 U.S.C. 1341 (a) (1) (A) occurred. Obligations authorized or incurred or expenditures made exceeded the available amount of any appropriation or fund. The Under Secretary of Defense (Comptroller) (USD(C)) reported the above violation to the Office of Management and Budget (OMB), the President, the President of the Senate, and the Speaker of the House of Representatives in December 1996.

Why are ADA Violations Important to the Air Force?

ADA violations like this one break the law. Their subsequent reporting affects the Congress and public's perception of how effectively and efficiently Air Force manages and expends funds. The Air Force, when viewed as not acting in a fiscally responsible manner, is subjected to increased Congressional oversight and funding reductions for programs and overall operating expenses. The negative publicity associated with ADA violations also overshadows the Air Force's positive efforts to achieve economies and efficiencies in overall operations.

Background

On 1 February 1995 the responsibility for the Air Force ADA program was transferred from the Defense Finance and Accounting Center—Denver (DFAS-DE) to the Assistant Secretary of the Air Force (Financial Management and Comptroller) (SAF/FM). The USD(C) directed the organizational change to insure that ADA investigations are completed in a more timely manner and adequate emphasis is placed on each investigation.

Reducing the ADA Case Backlog

The Air Force's senior financial management leadership took an aggressive approach with the ADA program. They specifically focused on reducing a backlog of older ADA cases under investigation. When the Air Force took over the ADA program they inherited 48 ongoing cases, 43 of which were already overdue to USD(C). Of the 43 cases, 35 were investigations that began in fiscal years 1992 and 1993. With help from the major commands financial management organizations, the number of ongoing ADA investigations have been drastically reduced to current day numbers totaling about 15 cases. This is a significant accomplish-

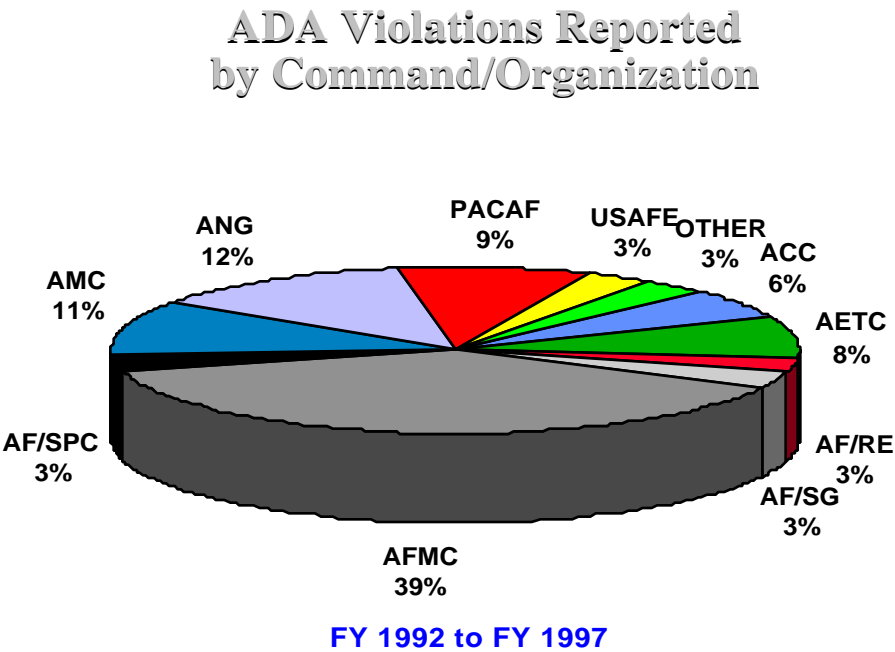
ment considering that 25 new ADA cases were also added to the Air Force inventory.

How are ADA Violations Discovered?

The manner in which ADA violations are discovered has changed over the last several years. In the past, audit reports were the primary means of identifying violations. In recent years, however, Air Force financial management organizations and management reviews have overtaken audit in identifying ADA violations. This trend indicates that improved fiscal controls, in conjunction with more individuals receiving fiscal law and ADA awareness training, is resulting in Air Force organizations identifying, reporting, and correcting inappropriate practices in the administrative control of funds.

Where Do ADA Violations Occur?

ADA violations have occurred in almost every Air Force organization. However, five organizations account for about 80% of the Air Force's reported violations. Major Command (MAJCOM), Field Operating Agency (FOA), Direct Reporting Unit (DRU) or Air Staff financial management organizations report suspected violations to SAF/FM and pro-



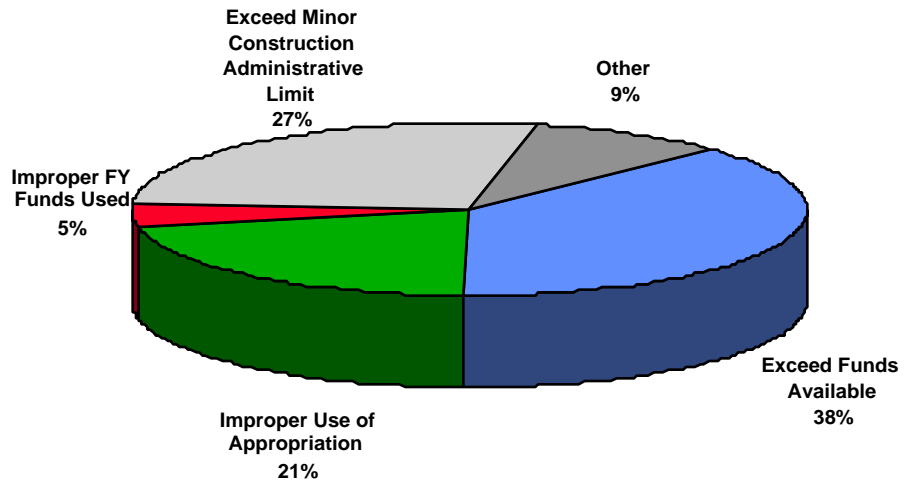
vide periodic status updates of the ongoing ADA investigations. The Air Force Materiel Command tends to have a large share of reported violations because the command handles much of our highly complex acquisition dollars.

What Causes an ADA Violation?

Obligating, expending, or authorizing the use of funds exceeding the amount available in an appropriation or fund is the number one cause of ADA violations within the Air Force. Such an example was presented at the beginning of this article. Although exceeding the minor construction administrative limit is cited as the number two cause of ADA violations, this condition has decreased dramatically since fiscal year 1992. Accordingly, the improper use of an appropriation (i.e., using operation and maintenance funds rather than other procurement funds to purchase

a data processing local area network) is currently the second most common cause of ADA violations.

Causes of ADA Violations From FY 92 thru FY 97



The Investigative Process

The investigative process is divided into three parts which consists of identifying potential violations, performing a formal investigation, and reporting the investigation results.

Identifying ADA Violations

Air Force ADA cases reported to OSD(C) ranged from a high of 87 in FY 1992 to a low of 5 in FY 1996. However, only a small number of the cases investigated resulted in actual ADA violations. For example, 26% of the cases investigated in FY 1992, 13% in FY 1993, 36% in FY 1994, and 61% in FY 1995 resulted in a reportable ADA violation. As a result, the large number of investigations being reported to USD(C) was overstating the seriousness of an ADA problem within the Air Force. Starting in late FY 1995, SAF/FM began focusing on screening potential violations in order to present a more accurate picture of Air Force ADA activity.

Preliminary reviews, lasting up to 90 days, are now performed to gather the basic facts and determine whether a violation occurred. The preliminary review results are documented in a Preliminary Review Report. The appropriate Staff Judge Advocate organization reviews the Preliminary Review Report and provides an opinion on the adequacy of fact finding and whether a formal ADA investigation is warranted. The 29 preliminary reviews performed during FY 1996 and FY 1997 resulted in five reported ADA violations in FY 1996 and twelve violations in FY 1997. This newly instituted screening process has resulted in more effective use of investigative resources, legal staff time, and training required to perform and report ADA investigations.

Performing Investigations

Formal investigations are performed when the Preliminary Review Report determines that a potential ADA violation has occurred or USD(C) or SAF/FM requests a formal investigation. The purpose of the formal investigation is to (1) identify and document the relevant facts and cir-

cumstances surrounding the potential violation (this may consist largely of a validation of facts found during the preliminary review), (2) state a conclusion as to the existence of an actual violation, supported by the evidence and applicable legal precedent, (3) identify the events which caused the violation, (4) establish whose action or inaction brought about the violation, and at what level of management it might reasonably have been prevented, (5) recommend appropriate administrative discipline, or provide adequate justification as to why disciplinary action is not warranted, (6) identify the required procedural and funding corrections and whether the correction has already been made, and (7) recommend management actions to prevent a recurrence. The formal investigation should be completed, and the results reported to SAF/FM, no later than six months from the start of the investigation.

Selecting an Investigating Officer

A qualified investigating officer must be appointed to perform an ADA investigation. The appropriate MAJCOM, FOA, DRU or Air Staff Commander/Vice Commander appoints the ADA investigating officer. In selecting an investigating officer, consideration is given to his or her expertise in Financial Management, understanding of Fiscal Law concepts, and the ability to perform an independent review. To ensure independence and impartiality during an investigation, the investigating officer must be selected from an organization external to the immediate organization being investigated (e.g., outside the program office where the potential violation may have occurred). Apparent conflict of interest or bias is one of the major determining factors in nonselection. A legal advisor from the local Staff Judge Advocate organization is assigned to work closely with and advise the investigating officer throughout the investigation. The legal advisor, among other things, will identify and interpret statutes, regulations and administrative guidance relevant to the matters under investigation.

Processing the Report of Violation

The investigating officer documents the investigation results and submits a detailed Report of Violation directly to the MAJCOM, FOA, DRU or Air Staff Financial Management organization. The appropriate Financial Management organization reviews the Report of Violation for accuracy and completeness and forwards it to the Command's Staff Judge Advocate for a legal sufficiency review. Upon completion of the legal sufficiency review, the report is then endorsed and forwarded to the appointing official (usually the MAJCOM, FOA, DRU or Air Staff Commander) for approval.

Disciplinary Action for Responsible Individuals

After the appointing official approves the Report of Violation, a copy of the final report is sent to the responsible individual(s) commander or supervisor for a decision on whether disciplinary action is appropriate. There is no requirement that disciplinary action be imposed for an ADA violation. However, the disciplining official must explain, with strong rationale, the disciplinary action or lack of disciplinary action imposed.

The responsible individual(s) commander or supervisor, in consultation with his/her legal advisor, determines whether administrative disciplinary action is warranted. The appropriate authority administers disciplinary action on a case-by-case basis. The level of discipline administered to the individual responsible should be commensurate with the nature and seriousness of the offense, the record of the person responsible, his/her level of experience, and the degree and level of responsibility of the individual. Any mitigating circumstances are also considered.

Disciplinary Action

Cases Reported From January 1995 to September 1997

<u>Disciplinary Action</u>	<u>Civilians</u>	<u>Military</u>	<u>Total</u>	<u>Percent</u>
No Disciplinary Action	18	17	35	32%
Counseling	9	6	15	14%
Oral/Verbal Admonishment	15	2	17	15%
Written Admonishment	0	13	13	12%
Written Reprimand	2	21	23	21%
Relieved of Current Duties/Publicly Reprimanded	1	1	2	2%
Suspension Without Pay	4	0	4	4%
Reassigned/Appraisal Downgraded	1	0	1	1%
Total	50	60	110	100%

Reporting Investigation Results

The appointing official sends the Report of Violation to SAF/FM after the disciplinary action process has been completed. The office of the Deputy Assistant Secretary, Financial Operations reviews the Report of Violation for completeness and prepares a three or four page Summary Report of Violation. The Summary Report of Violation, along with supporting documentation, is coordinated with the Air Force General Counsel. After coordination is complete, SAF/FM sends the approved Summary Report of Violation to the office of the USD(C). The USD(C) reports all violations to the Office of Management and Budget, President, President of the Senate, and Speaker of the House of Representatives.

ADA Program Successes

The Air Force has successfully reduced the backlog of older investigations and implemented improved screening procedures for identifying potential violations. In addition, organizations are focusing more attention on preventing ADA violations. MAJCOM, FOA, DRU, and Air Staff ADA prevention initiatives include increased fiscal and appropriation law training along with comprehensive management program and budget reviews. These preventive measures are bringing the Air Force closer to our ultimate goal of having 10 or fewer ongoing ADA investigations at any one time.

Improving Investigation Timeliness

Greater emphasis needs to be directed toward improving investigation timeliness. The Air Force, on average, is taking about 15 months to complete the investigative process. DoD guidance requires that the ADA investigation take no longer than nine months from start to submission of the Summary Report of Violation to USD(C).

ADA violations are not completed within the required nine month period primarily because (1) the investigation is the investigating officer's primary duty until completion, (2) the organizational activity where the

violation occurred did not make procedural corrections to prevent future violations and/or correct the adverse funding condition that resulted from the violation, (3) the individual(s) identified as responsible for the violation were not provided an opportunity to comment on the investigation results, (4) the disciplinary action decision was not adequately supported, and (5) legal reviews take a long time to complete.

Future Initiatives

Two initiatives are currently in the works that should, when completed, noticeably improve the ADA investigative process. First, a new Air Force Instruction will soon be released that will further clarify and describe how the Air Force investigates, reports, and processes ADA violations. Second, SAF/FM is in the process of developing an investigator training course that will deliver “just-in-time” training in the requirements for how to conduct an ADA investigation.

Summary

A recent DoD Inspector General report on the Air Force plan for implementing new DoD guidance on ADA violations stated that “The Air Force gave a high priority to improving, investigating and reporting on Antideficiency Act violations. We commend the efforts of the Air Force.” The Air Force has successfully implemented a program for identifying, investigating and reporting ADA violations. In addition, tremendous progress has been made in reducing the backlog of older ADA investigations and number of new cases reported for investigation. Most of the improvement is attributable to increased support from senior SAF/FM leaders, more attention and involvement in identifying and investigating ADA cases from major command financial management organizations, better screening of suspected violations and improved ADA training. To further improve the investigative process, organizational commanders need to more closely monitor the status of ongoing investigations and take whatever actions deemed appropriate to identify and correct the factors causing unacceptable reporting delays.



About the Author



Mr David Sapp is assigned to the Air Force audit liaison and follow-up organization (SAF/FMPF) in the Pentagon. He works with Major Commands and Air Staff organizations in identifying, investigating, and reporting potential ADA violations. Mr Sapp has a bachelor of science in Business Administration from Fairmont State College and is a graduate of the Army Comptrollership Program, receiving a MBA from Syracuse University. His prior work experience includes assignments with the Air Force Audit Agency and the US General Accounting Office. He is a Certified Government Financial Manager and a member of the Washington Chapter of ASMC.